

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

KELLY STREET,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 18-00477-CV-W-ODS
	)	
CITY OF HARRISONVILLE,	)	
	)	
Defendant.	)	

**SCHEDULING AND TRIAL ORDER**

Pursuant to Rules 16(b) and 26(f) of the Federal Rules of Civil Procedure, and upon consideration of the parties' views in the matter, the following schedule is hereby established:

1. Any motion to join additional parties shall be filed on or before September 21, 2018.
2. Any motion to amend the pleadings shall be filed on or before September 21, 2018.
3. The parties agree to exchange all disclosures required by Fed. R. Civ. P 2(a)(1) and including disclosure of locations and format of all discoverable electronically stored information (ESI) no later than October 5, 2018.
4. All dispositive motions, except those under Rule 12(h)(2) or (3) of the Federal Rules of Civil Procedure, shall be filed on or before November 7, 2018. All motions for summary judgment shall comply with Local Rule 56.1.
5. All motions for extension of time must state:
  - a. The date when the pleading, response, or other action is/was first due;
  - b. The number of previous extensions and the date the last extension expires;
  - c. The cause for the requested extension, including a statement as to why the action due has not been completed in the allotted time; and

- d. Whether opposing counsel consents or objects to the requested extension (agreement or lack of objection by counsel is not binding on the Court).

6. A final pretrial conference in this case will be held at 11:00 a.m. on February 20, 2019, at the United States Courthouse in Kansas City, Missouri. Lead trial counsel shall participate in this conference. The agenda for this conference will include:

- a. Stipulations by the parties;
- b. Identification of legal and factual issues to be tried, if necessary;
- c. Estimate length of trial;
- d. Trial schedule;
- e. Exclusion of witnesses;
- f. Ascertain need for special equipment and advise counsel of availability of needed equipment as well as coordination with IT personnel;
- g. Establish order of trial if multiple parties;
- h. Legal questions to be resolved prior to trial;
- i. Suggestions by counsel to simplify and expedite the trial;
- j. Disposition of pending motions; and
- k. Referral of case for mediation.

7. The following documents shall be filed prior to the pretrial conference:

- a. Motions in Limine: Motions in limine shall be filed at least fourteen (14) days prior to the pretrial conference. Responses to motions in limine shall be filed at least seven (7) days prior to the pretrial conference. Each party shall file its motions in limine in a single document on ECF, designating separate evidentiary issues by numbered headings within the document.
- b. Stipulations: The parties may stipulate to such facts as they deem appropriate. The Court expects the parties to stipulate to the authenticity, foundations and admissibility of a vast majority of the exhibits. If there are a few exhibits to which the parties are unable to stipulate, the Court will rule those objections at trial.
  - i. Stipulation of Uncontroverted Facts: At least seven (7) days prior to the pretrial conference, the parties shall file a stipulation of any uncontroverted facts. If no stipulated facts can be agreed upon, including facts related to the Court's subject matter or personal jurisdiction, the parties shall file a joint statement to that effect. Notwithstanding that discovery

will have closed, a request to stipulate, if preserved in the record, will constitute a request for admission under Rule 36 of the Federal Rules of Civil Procedure and failure to stipulate may be subject to sanctions under Rule 37(c) of the Federal Rules of Civil Procedure.

- ii. Stipulation as to Foundation: At least seven (7) days prior to the pretrial conference, the parties shall file a stipulation as to the foundation for the admissibility of evidence (specifically, identification and authenticity), when the foundation for the exhibit is not to be contested.
- iii. Stipulation as to Admissibility: At least seven (7) days prior to the pretrial conference, the parties shall file a stipulation as to the *admissibility* of exhibits. The Court urges the parties to pre-admit all exhibits to which there is not a legitimate objection. Doing so will eliminate delays and downtime during trial and keep the jury focused on the evidence.
- c. Witness List: At least seven (7) days prior to the pretrial conference, each party shall file a list of all witnesses who may be called at trial. If a witness is not listed by a party, that witness will not be permitted to testify absent leave of Court and then only for the purpose of unanticipated rebuttal or impeachment. After the time for filing lists of witnesses has expired, no supplemental or amended list will be filed without leave of Court and for good cause.
- d. Exhibit List: At least seven (7) days prior to the pretrial conference, each party shall file a list of all exhibits that may be offered at trial. The list shall be prepared on the form provided by the Court. See <http://www.mow.uscourts.gov/sites/mow/files/DC%20Exhibit%20Index.pdf>. Each exhibit will be designated as either "Plaintiff's" or "Defendant's," numbered with an Arabic numeral, and described. If an exhibit consists of more than one page or part, the number of pages or parts shall be included in the description. The exhibit number must be marked on each exhibit. It is not necessary to list exhibits to be used only for impeachment or rebuttal purposes. Except by leave of Court and for good cause, no exhibit will be received in evidence which is not listed by the counsel offering the exhibit. After the time for filing exhibit lists has expired, no supplemental or amended exhibit list will be filed without leave of Court and for good cause.
- e. Designation of Deposition Testimony: At least fourteen (14) days before the pretrial conference, each party asserting an affirmative claim or claims for relief (plaintiff, third-party plaintiff, counter-claiming defendant, cross-claiming defendant, etc.) shall file and

serve a designation, by page and line number, of any deposition testimony to be offered in evidence as a part of that party's case.

- f. Objections to Designated Deposition Testimony and Counter Designations: At least seven (7) days prior to the date the pretrial conference, each party defending against an affirmative claim for relief shall file and serve:
  - i. Any objections to proposed deposition testimony designated by any other party; the Court will not consider objections to deposition designations unless counsel have met and conferred in a good faith effort to settle the objections;
  - ii. A designation, by page and line number, of any deposition testimony to be offered as cross-examination to deposition testimony designated by other parties; and
  - iii. A designation, by page and line number, of any deposition testimony to be offered in evidence as part of that party's case-in-chief in connection with such defense.
- g. Objections to Counter-Designations: At least three (3) days before the date of the pretrial conference, each party asserting an affirmative claim or claims for relief shall file and serve:
  - i. Any objections to proposed deposition testimony designated by any other party; the Court will not consider objections to deposition designations unless counsel have met and conferred in a good faith effort to settle the objections; and
  - ii. A designation, by page and line number, of any deposition testimony to be offered as cross-examination to deposition testimony designated by other parties.

8. This case is scheduled for a bench trial, commencing at **9:00 a.m.** on March 25, 2019, in Courtroom 8C at the United States Courthouse in Kansas City, Missouri.

- 9. The following documents shall be filed prior to trial:
  - a. Trial Brief: At least ten (10) days prior to trial, counsel for each party may, but is not required to, file a trial brief stating the factual and legal contentions for the party for whom the trial brief is filed.
  - b. Proposed Findings of Fact and Conclusions of Law: At least ten (10) days prior to trial, counsel for each party must file proposed findings of fact and conclusions of law. Parties must also e-mail their proposed findings of fact and conclusions of law in Word format to [Renea.Mitra@mow.uscourts.gov](mailto:Renea.Mitra@mow.uscourts.gov).

10. The Court may place time limits on opening statements, and direct and cross-examination of all witnesses. You should be prepared to support your representations as to the length of trial.

11. In order to ensure the efficient use of time during trial, the following rules of Court will be imposed:

- a. All legal issues must be raised in advance of trial by written motions and in accordance with the scheduling order of this Court;
- b. Motions will not be heard during trial without a strong showing that counsel could not, by due diligence, have raised them sooner;
- c. Testimony will not be interrupted to deal with evidentiary matters that could have been heard in advance of trial. The Court will consider those matters during recess, at noon break, or at the end of the day. Counsel should be prepared with written authority for their positions; and
- d. Witnesses who will be testifying from exhibits or about exhibits should review them immediately prior to their testimony.

IT IS SO ORDERED.

DATE: September 7, 2018

/s/ Ortrie D. Smith  
ORTRIE D. SMITH, SENIOR JUDGE  
UNITED STATES DISTRICT COURT